

ESTTA Tracking number: **ESTTA403738**

Filing date: **04/14/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191056
Party	Plaintiff White Rock Distilleries, Inc.
Correspondence Address	DANIEL I SCHLOSS GREENBERG TRAURIG LLP 200 PARK AVENUE, 34TH FLOOR NEW YORK, NY 10166 UNITED STATES schlossd@gtlaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Daniel I. Schloss
Filer's e-mail	schlossd@gtlaw.com
Signature	/Daniel I. Schloss/
Date	04/14/2011
Attachments	91191056RebuttalNtcReliance.pdf (2 pages)(56490 bytes) 91191056NtcRelianceOfficialRecords.pdf (10 pages)(1009900 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION

Mark: PINNACLES RANCHES
Applicant: Franciscan Vineyards, Inc.
Serial No.: 77/298,674
Published in
the **Official Gazette**: March 17, 2009

WHITE ROCK DISTILLERIES, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91191056
)	
FRANCISCAN VINEYARDS, INC.,)	
)	
Applicant.)	
<hr style="width:45%; margin-left:0"/>		

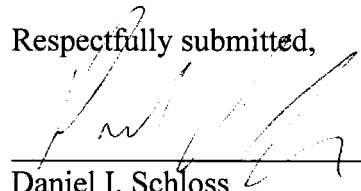
OPPOSER'S REBUTTAL NOTICE OF RELIANCE ON OFFICIAL RECORDS

Pursuant to 37 C.F.R. § 2.122(e), Applicant, White Rock Distilleries, Inc., hereby gives notice that it intends to rely on the following official records: (1) Title 27 of the Code of Federal Regulations (C.F.R.) part 4, Labeling and Advertising of Wine, namely, 27 C.F.R. § 4.33 subparts (a) and (b), and 27 C.F.R. § 4.39 subparts (a), (i) and (m); and (2) Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment, Proposed Rules, 75 Fed. Reg. 67666-67669 (November 3, 2010) (to be codified in 27 C.F.R. pt.4), all of which were accessed and printed from the publicly available web site for the U.S. Government Printing Office (GPO), which can be found at <http://www.gpo.gov>. These documents are relevant in the instant proceeding as they serve to clarify and explain certain

portions of the testimony of Applicant's witness Deborah Price.

Dated: April 14, 2011

Respectfully submitted,



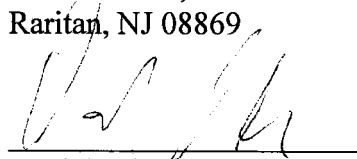
Daniel I. Schloss
Alan N. Sutin
Masahiro Noda
GREENBERG TRAURIG, LLP
200 Park Avenue, 34th Floor
New York, New York 10166
Tel: (212) 801-9200
Fax: (212) 801-6400

CERTIFICATE OF SERVICE

Date: April 14, 2011

The undersigned hereby certifies that a true and correct copy of the foregoing Opposer's Rebuttal Notice of Reliance on Official Records has been served by first class mail, postage prepaid, this 14th day of April 2011 upon Franciscan Vineyards, Inc. at the following correspondence address of its counsel of record:

John M. Rannells, Esq.
Baker & Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Daniel I. Schloss

§ 4.33

(d) *Availability of information*—(1) *General*. TTB will promptly post to its public Web site, <http://www.ttb.gov>, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information*. A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

- (i) The request must be in writing;
- (ii) The request must clearly identify the information to be kept confidential;
- (iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;
- (iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and
- (v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB-53, 71 FR 42267, July 26, 2006]

§ 4.33 Brand names.

(a) *General*. The product shall bear a brand name, except that if not sold

27 CFR Ch. I (4-1-10 Edition)

under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names*. No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin*. This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualifications shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 4.34 Class and type.

(a) The class of the wine shall be stated in conformity with subpart C of this part if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation, type designation of varietal significance, semigereric geographic type designation, or geographic distinctive designation, to which the wine may be entitled. In the case of champagne, or crackling wines, the type designation "champagne" or "crackling wine" ("petillant wine", "frizzante wine") may appear in lieu of the class designation "sparkling wine". In the case of wine which has a total solids content of more than 17 grams per 100 cubic centimeters the words "extra sweet", "specially sweetened", "specially sweet" or "sweetened with

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 4.39

the name and amount in percent by volume of each such ingredient.

(h) *Statement of contents of containers.* Upon request of the appropriate TTB officer, there shall be submitted a full and accurate statement of the contents of the containers to which labels are to be or have been affixed.

[T.D. ATF-53, 43 FR 37677, Aug. 23, 1978, as amended by T.D. ATF-66, 45 FR 40544, June 13, 1980; T.D. ATF-94, 46 FR 55095, Nov. 6, 1981; T.D. ATF-249, 52 FR 5955, Feb. 27, 1987; T.D. ATF-275, 53 FR 27046, July 18, 1988; T.D. ATF-312, 56 FR 31077, July 9, 1991]

§ 4.38a Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 4.30 through 4.39 on labels.

(b) *Sealed cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than a shipping container), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by "Brand" or "Product of U.S.A.", must also display such modification.

(3) Wines for which a truthful and adequate statement of composition is required must display such statement.

[T.D. ATF-36, 41 FR 47425, Oct. 29, 1976]

§ 4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any

written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design device, or representation which is obscene or indecent.

(4) Any statement, design device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with

§ 4.39

27 CFR Ch. I (4-1-10 Edition)

§ 4.36), which tends to create the impression that a wine:

- (i) Contains distilled spirits;
- (ii) Is comparable to a distilled spirit; or
- (iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or created the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits base. Examples of such words are: "Manhattan," "Martini," and "Daquiri" in a class and type designation or brand name of a wine cocktail; "Cuba Libre," "Zombie," and "Collins" in a class and type designation or brand name of a wine specialty or wine highball; "creme," "cream," "de," or "of" when used in conjunction with "menthe," "mint," or "cacao" in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of § 4.27; (2) references relating to methods of wine production involving storage or aging in accordance with § 4.38(f); or (3) use of the word "old" as part of a brand name.

(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-

point Gothic caps and in the following form: "Bottled in ____" (inserting the year in which the wine was bottled).

(d) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith in the same size and kind of printing, there shall be stated an explanation of the significance thereof such as "established" or "founded in". If any such date refers to the date of establishment of any business or brand name, it shall not be stated, in the case of containers of a capacity of 5 liters or less, in any script, type, or printing larger than 2 millimeters, and shall be stated in direct conjunction with the name of the person, company, or brand name to which it refers if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable.

(e) *Simulation of Government stamps.*

(1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) Bonded wine cellar and bonded winery numbers may be stated but only in direct conjunction with the name and address of the person operating such wine cellar or winery. Statement of bonded wine cellar or winery numbers may be made in the

following form: "Bonded Wine Cellar No. _____", "Bonded Winery No. _____", "B. W. C. No. _____", "B. W. No. _____". No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(3) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statements relating thereto. The reference to such certificate or certification shall be substantially in the following form:

This product accompanied at the time of the importation by a certificate issued by the

(Name of government)

government indicating that the product is

(Class and type as stated on the label)

and (if label bears a statement of vintage date) that the wine is of the vintage of

(Year of vintage stated on the label)

(f) *Use of the word "Importer", or similar words.* The word *Importer*, or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words "Product of the United States", or similar words to negative any impression that the product is imported, and such negative statement shall appear in the same size and kind of printing as such name.

(g) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appro-

priate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Health-related statements*—(1) *Definitions.* When used in this paragraph (h), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which

they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for labeling*—(i) *Health-related statements*. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims*. (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a wine label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a wine label.

(B) TTB will approve the use of a specific health claim on a wine label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the ef-

fects on health of wine or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement the following disclaimer: "This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;" or

(2) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(i) *Geographic brand names*. (1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to July 7, 1986:

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with §4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the appropriate TTB officer.

(j) *Product names of geographical significance (not mandatory before January 1, 1983)*. The use of product names with specific geographical significance is prohibited unless the appropriate TTB officer finds that because of their long usage, such names are recognized by

consumers as fanciful product names and not representations as to origin. In such cases the product names shall be qualified with the word "brand" immediately following the product name, in the same size of type, and as conspicuous as the product name itself. In addition, the label shall bear an appellation of origin under the provisions of § 4.34(b), and, if required by the appropriate TTB officer, a statement disclaiming the geographical reference as a representation as to the origin of the wine.

(k) *Other indications of origin.* Other statements, designs, devices or representations which indicate or infer an origin other than the true place of origin of the wine are prohibited.

(l) *Foreign terms.* Foreign terms which: (1) Describe a particular condition of the grapes at the time of harvest (such as "Auslese," "Eiswein," and "Trockenbeerenauslese"); or (2) denote quality under foreign law (such as "Qualitätswein" and "Kabinett") may not be used on the labels of American wine.

(m) *Use of a vineyard, orchard, farm or ranch name.* When used in a brand name, a vineyard, orchard, farm or ranch name having geographical or viticultural significance is subject to the requirements of §§ 4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

[T.D. 6521, 25 FR 13841, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart E—Requirements for Withdrawal of Wine From Customs Custody

§ 4.40 Label approval and release.

(a) *Certificate of label approval.* No imported beverage wine in containers shall be released from U.S. Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, TTB Form 5100.31.

(b) If the original or photostatic copy of TTB Form 5100.31 has been approved, the brand or lot of imported wine bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.* Imported wine in U.S. Customs custody which is not labeled in conformity with certificates of label approval issued by the appropriate TTB officer must be relabeled prior to release under the supervision and direction of Customs officers of the port at which the wine is located.

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF-66, 45 FR 40546, June 13, 1980, as amended by T.D. ATF-94, 46 FR 55095, Nov. 6, 1981; T.D. ATF-242, 51 FR 39525, Oct. 29, 1986; T.D. ATF-359, 59 FR 42160, Aug. 17, 1994; T.D. ATF-406, 64 FR 2128, Jan. 13, 1999]

§ 4.45 Certificates of origin, identity and proper cellar treatment.

(a) *Origin and identity.* Imported wine shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such wine has been authorized by the foreign government concerned, certifying as to the identity of the wine and that the wine has been produced in compliance with

Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4, Labeling and Advertising of Wine, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.25 is amended:

a. By revising paragraph (a)(2), the introductory text of paragraph (b)(2), and paragraph (d); and

b. In paragraph (e)(1)(ii), by removing the words “(other than an appellation defined in paragraph (a)(2)(i) or (a)(2)(ii))” and adding, in their place, the words “(other than an appellation defined in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii))”.

The revisions read as follows:

§ 4.25 Appellations of origin.

(a) * * *

(2) *Imported wine*. An appellation of origin for imported wine is:

- (i) A country;
- (ii) A state, province, territory, or similar political subdivision of a country equivalent to a State or county;
- (iii) Two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous; or
- (iv) A viticultural area (as defined in paragraph (e) of this section).

(b) * * *

(2) *Imported wine*. An imported wine is entitled to an appellation of origin other than a multistate appellation, or a viticultural area, if:

* * * * *

(d) *Multistate appellations*. (1) *American wine*. An appellation of origin comprising two or no more than three States which are all contiguous may be used, if:

(i) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;

(ii) The wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and

(iii) The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(2) *Imported wine*. An appellation of origin comprising two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous may be used if:

(i) All of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a State indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or political subdivision equivalent to a State is shown on the label with a tolerance of plus or minus 2 percent; and

(ii) The wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

* * * * *

Signed: June 2, 2010.

John J. Manfreda,
Administrator.

Approved: June 30, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).

[FR Doc. 2010-27736 Filed 11-2-10; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB-2010-0006; Notice No. 109]

RIN 1513-AB24

Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is considering amending the regulations concerning various winemaking terms commonly used on labels and in advertisements to provide consumers with information about the growing or bottling conditions of wine. We invite comments from industry members, consumers, and

other interested parties as to whether and to what extent we should propose specific regulatory amendments for further public comment.

DATES: We must receive written comments on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB-2010-0006 at “Regulations.gov,” the Federal e-rulemaking portal);

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

- *Hard Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB-2010-0006 at <http://www.regulations.gov>. A direct link to this docket is posted on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 109. You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20020. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; (301) 290-1460.

SUPPLEMENTARY INFORMATION:

I. Authority To Prescribe Labeling and Advertising Regulations for Wine

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of alcohol beverage products, including wine, as that term is defined in 27 U.S.C. 211. These provisions give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer with respect to such products, to provide the consumer with “adequate information” as to the identity and quality of the product, and to prohibit false or misleading statements. Additionally, these FAA Act provisions give the Secretary the authority to

prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the FAA Act and the regulations promulgated under it. The labeling and advertising regulations for wine are codified in title 27 of the Code of Federal Regulations (CFR), parts 4, 9, 12, 13, and 16.

II. The Current Regulations, the Use of Various Winemaking Terms on Labels and in Advertisements, and Request for Comments

A. Background

The TTB wine labeling and advertising regulations provide, among other things, definitions of various winemaking terms or usages that are indicative of specific processes used in the production of wine. When used on labels and in advertisements, these terms help consumers better identify the products they purchase by providing meaningful information about those products.

One of the terms defined by the regulations for use on wine labels is "Estate bottled." Section 4.26(a) of the TTB regulations (27 CFR 4.26(a)) provides that the term "Estate bottled" may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

- Is located in the labeled viticultural area;
- Grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; and
- Crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

In addition to prescribing mandatory label information and permitting bottlers to label their products with specifically defined terms, such as "Estate bottled," the TTB regulations in § 4.38(f) (27 CFR 4.38(f)) permit bottlers to label their wine with additional information, provided that the information is truthful, accurate, specific, not disparaging, and not misleading, and does not conflict with, nor in any manner qualify, statements required by the regulations. When bottlers provide such additional information on their labels, TTB relies on the general meaning of any terms used and approves their use if TTB

finds that the information is unlikely to mislead the consumer with respect to the products in question. Further, when a producer, bottler, or importer applies for a Certificate of Label Approval (COLA) on TTB Form 5100.31, that person signs a certification, under penalties of perjury, that "the representations on the labels * * * truly and correctly represent the content of the containers to which these labels will be applied." A wine that does not match the label description is not entitled to bear that label.

This advance notice addresses several winemaking terms for which the current regulations provide no definition. TTB has approved these terms for use on wine labels when they met the requirements of § 4.38(f). If TTB were to adopt new regulations governing the use of these terms, any previously approved non-compliant labels may be revoked by operation of the TTB regulations under 27 CFR part 13, subpart E.

Accordingly, as explained below, TTB is soliciting preliminary comments from industry members, consumers, and other interested parties on a number of issues involving the use of specific terms on labels and in advertisements, including the possible effect that any regulatory changes might have on approved labels, in order to assist TTB in determining whether to propose specific regulatory amendments for further public comment procedures. Any regulatory changes concerning wine labeling would similarly affect wine advertising pursuant to the provisions of 27 CFR 4.64, which prohibits statements that are false or untrue in any material particular or that are likely to mislead the consumer, and which provides certain other links to various labeling regulations through 27 CFR 4.64. Therefore, TTB is also soliciting preliminary comments on the use of such terms in advertisements.

B. Estate(s), Estate Grown, and Other Similar Terms

The terms "Estate" and "Estates" without any reference to "Estate bottled" have been used on labels of wine for many years. While the TTB regulations specifically address the use of the designation "Estate bottled" as indicated above, the regulations do not address or define the word "Estate" or "Estates" when used alone or with additional words other than "Estate bottled." In conjunction with the requirements in § 4.26(a), § 4.26(d) provides that no term other than "Estate bottled" may be used on a label to indicate combined growing and bottling conditions. Additionally, § 4.39(a)(8) of the TTB regulations (27

CFR 4.39(a)(8)) prohibits a label from containing:

Any *coined word* or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or *permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation* and is in fact so designated on its labels. [Emphasis added.]

It has been TTB's long-standing position that the appearance of the word "Estate" or "Estates" on labels of wine does not, in and of itself, create an "Estate bottled" representation and does not violate the prohibition in § 4.39(a)(8). Therefore, TTB has permitted, in certain circumstances, the use of the words "Estate" or "Estates" on labels as additional information under § 4.38(f).

Notwithstanding § 4.26(d) of the TTB regulations as referenced above, for over twenty years TTB and its predecessor agency have allowed the term "Estate grown" to be used as a synonym for the term "Estate bottled." Thus, if a product is labeled "Estate grown" it must meet the standard for use of "Estate bottled" as provided in § 4.26(a). TTB has not codified this position in the regulations. Recently, some industry members requested that TTB permit the use of the words "Estate grown" on labels of wines that do not meet the "Estate bottled" standards in § 4.26. One industry member contended that the term "Estate grown" does not convey information about the bottling conditions of the wine and that, therefore, wine labeled with that designation should not have to meet the "Estate bottled" requirements.

TTB is considering the possibility of amending the regulations to set forth a TTB position concerning the use of the terms "Estate," "Estates," "Estate Grown," and other similar terms on wine labels. Accordingly, TTB invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Does the use of the term "estate" or "estates" as part of a name or otherwise on wine labels convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the term "Estate" in the regulations when not used in the expression "Estate bottled"? If so, what should that definition be?

3. Do wine labels with the term "estate" or "estates" lead consumers to believe that the product is "Estate bottled" within the meaning of § 4.26?

4. Do wine labels that use the term "estate" or "estates," in the brand name, when not referencing "Estate bottled," lead consumers to believe that the product was produced primarily from winemaking material grown on the named estate? Should these products conform to the requirements outlined for use of a vineyard, orchard, farm or ranch name outlined in § 4.39(m)?

5. Should TTB consider proposing a separate standard for the use of the term "estate" or "estates" on wine labels and, if so, what should that standard be?

6. Should TTB propose to amend the regulations to reflect its current policy that "Estate grown" may be used on a label only if the wine meets the requirements for products labeled "Estate bottled" under § 4.26?

7. Should TTB propose a usage standard for "Estate grown" in the regulations that differs from that specified for "Estate bottled" and if so, what should that standard be?

8. Should TTB continue to permit the use of "Estate(s) vineyard(s)," "Vineyard estate(s)," or "Estate(s) wines" or other similar terms, whether or not preceded by the winery name, on product labels when the wine does not meet the "Estate bottled" standards in § 4.26? Why or why not?

9. Would the use of the terms described in paragraph 8 above lead consumers to believe that the product was "Estate bottled" in accordance with § 4.26? Should TTB set specific regulatory standards for the use of these terms and, if so, what should they be?

C. Proprietor Grown and Vintner Grown

Since 1982, TTB and its predecessor agency have had a policy regarding the use of the terms "Proprietor grown" and "Vintner grown" on wine labels and in advertisements. Under this policy, TTB considers the words "Proprietor grown" and "Vintner grown" to be acceptable on wine labels and in advertisements, provided that 100 percent of the grapes are grown on vineyards owned or controlled by the bottling winery. TTB believes that adherence to this standard is necessary in order for the label to meet the truthful, accurate, and not-misleading standards of § 4.38(f), and so that any advertisements conform to the prohibitions in § 4.64 concerning false and misleading statements. TTB is considering the possibility of amending the regulations to reflect this position and invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Should TTB continue to permit, without amending the regulations, the

use of the terms "Proprietor grown" and "Vintner grown" on wine labels and in advertisements only if 100 percent of the grapes used to make the product are grown on vineyards owned or controlled by the bottling winery?

2. Should TTB propose to amend the regulations to reflect the "Proprietor grown" and "Vintner grown" standard as stated above?

3. Should TTB consider another standard for the use of these terms and, if so, what should it be?

D. Vineyard, Orchard, Farm, or Ranch and Other Similar Terms

Section 4.39(m) of the TTB regulations provides that the name of a vineyard, orchard, farm, or ranch shall not be used on a wine label unless 95 percent of the wine in the container was produced from "primary winemaking material grown on the named vineyard, orchard, farm or ranch." The TTB regulations, do not, however, define these terms.

TTB has received and approved applications for COLAs for labels using the designation "Single vineyard." TTB considers the term "single," when used in conjunction with the term "vineyard" to be additional information covered by § 4.38(f) and therefore subject to the requirements of that section. It has been the position of TTB that the use of the designation "Single vineyard" on labels and in advertisements is appropriate only if 100 percent of the grapes used to make the wine come from one vineyard. Accordingly, TTB is considering the possibility of amending the regulations to define the terms "vineyard," "orchard," "farm," and "ranch" and to incorporate the position concerning use of the designation "Single vineyard" described above. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Does the use of a vineyard, orchard, farm or ranch name on wine labels and in advertisements convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the terms "vineyard," "orchard," "farm," or "ranch" in the regulations? If so, what should the definitions be?

3. Should TTB propose to amend the regulations to provide a standard for use of the designation "Single vineyard" and, if so, should that standard be the 100 percent standard described above or some other standard? Should TTB propose to use the same standard for the designations "Single orchard," "Single

farm," and "Single ranch"? Why or why not?

E. Other Terms Used on Wine Labels and in Advertisements

TTB understands that there are a variety of other terms not listed above which are commonly used on wine labels and in advertisements to provide some meaningful information to consumers about the content of the particular product. These terms are not currently defined in the TTB regulations. These terms include but are not limited to "Proprietors Blend," "Old Vine," "Barrel Fermented," "Old Clone," "Reserve," "Select Harvest," "Bottle Aged," and "Barrel Select." TTB is seeking input from all interested persons regarding which of these terms, or additional terms not listed, if any, TTB should consider defining for the purposes of ensuring consumers are provided with truthful and non-misleading information about the wine. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Which terms currently used in wine labeling and advertising should TTB consider defining, if any, and what should those definitions be?

2. Why or why not should TTB consider defining such terms?

III. Public Participation

A. Comments Invited

We invite comments from industry members, consumers, and other interested parties on the questions outlined above concerning the use of various winemaking terms commonly used on wine labels and in wine advertisements.

B. Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form associated with this notice in Docket No. TTB-2010-0006 on "Regulations.gov," the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to that docket is available under Notice No. 109 on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division,

Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

• **Hand Delivery/Courier:** You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 109 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice and any electronic or mailed comments we receive about it. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 109. You may also reach the docket containing this notice and its related comments through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice and any electronic or mailed comments we receive on it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

IV. Drafting Information

Lisa M. Gesser and Joanne C. Brady of the Regulations and Rulings Division drafted this notice.

Signed: May 13, 2010.

John J. Manfreda,
Administrator.

Approved: June 22, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).

[FR Doc. 2010-27737 Filed 11-2-10; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Docket No. TTB-2010-0008; Notice No. 111]

RIN 1513-AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is proposing to revise its regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. This proposed rule responds to a recent final rule issued by the Food and Drug Administration as well as reports of severe allergic reaction, including anaphylaxis, to cochineal extract and carmine-containing foods. This proposal would allow consumers who are allergic to cochineal extract or carmine to identify and thus avoid alcohol beverage products that contain these color additives.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

• <http://www.regulations.gov>: Use the online comment form for this notice as posted within Docket No. TTB-2010-0008 at "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

• **Mail:** Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

• **Hand Delivery/Courier in Lieu of Mail:** Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB-2010-0008 at <http://www.regulations.gov>. A direct link to this docket is posted under Notice No. 111 on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml. You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290-1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333-7050.

SUPPLEMENTARY INFORMATION:

I. TTB's Authority To Prescribe Alcohol Beverage Labeling Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), sets forth standards for regulation of the labeling of wine (containing at least 7 percent alcohol by volume) distilled spirits, and malt beverages, generally referred to as "alcohol beverage products" throughout this notice. This section gives the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with "adequate information" as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product. Section 105(e) of the FAA Act also